

United States District Court  
Eastern District of California

Jerry Doran, ) No. CIV. S-04-0003 FCD/CMK  
Plaintiff, )  
vs. ) Order re: Plaintiff's Motion for  
JJ Motels dba Super 8 Motel, ) Turnover Order of Property<sup>1</sup>  
Defendant. )  
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## BACKGROUND

On May 23, 2005, this court entered a judgment for plaintiff Jerry Doran (“plaintiff”) as judgment creditor against defendant/debtor JJ Motels dba Super 8 Motel (“defendant”), in the amount of \$16,000 for damages. (Ex. A to Pl.’s Mtn., filed Dec. 8, 2008 [Docket #47].) On August 26, 2005, a second judgment in the amount of \$26,898.88 for attorneys’ fees

<sup>1</sup> Plaintiff filed the instant motion, setting the matter for hearing on February 20, 2009. However, the court finds that oral argument will not be of material assistance, and it therefore submits the motion on the papers. E.D. Cal. L.R. 78-230(h).

1 was entered for plaintiff and against defendant. (Id. at Ex. B.) On  
2 September 4, 2008, two Writs of Execution of Judgment, pursuant to  
3 Section 699.510 of the California Code of Civil Procedure, were issued for  
4 the recovery of these outstanding debts. (Id. at Ex. C and D.) To date,  
5 defendant has not fulfilled its obligation under these judgments. Plaintiff  
6 therefore seeks a turnover order from the court requiring defendant to  
7 turnover title of real property so that it may be auctioned off to satisfy the  
8 judgments.

9 **DISCUSSION**

10 The execution of final judgments is governed by Rule 69(a) of the  
11 Federal Rules of Procedure, which states:

12 Process to enforce a judgment for the payment of money *shall*  
13 *be a writ of execution*, unless the court directs otherwise. The  
14 procedure on execution, in proceedings supplementary to and in  
15 aid of a judgment, and in proceedings on and in aid of  
16 execution *shall be in accordance with the practice and*  
17 *procedure of the state in which the district court is held*,  
18 existing at the time the remedy is sought, except that any statute  
19 of the United States governs to the extent that it is applicable. In  
20 aid of the judgment or execution, the judgment creditor or a  
21 successor in interest when that interest appears of record, may  
22 obtain discovery from any person, including the judgment  
23 debtor, in the manner provided in these rules or in the manner  
24 provided by the practice of the state in which the district court  
25 is held.

26 Fed. R. Civ. P. 69(a) (emphasis added). Post-judgment enforcement  
27 proceedings in this court must comply with California law. *Credit Suisse*  
28 *v. United States Dist. Court*, 130 F.3d 1342, 1344 (9th Cir. 1997); *Hilao v.*  
*Estate of Marcos*, 95 F.3d 848, 850 (9th Cir. 1996). Section 699.040 of the  
California Code of Civil Procedure, entitled “Turnover order in aid of  
execution,” provides in pertinent part that:

1       (a) If a writ of execution is issued, the judgment creditor may  
2       apply to the court *ex parte*,<sup>2</sup> or on noticed motion if the court so  
3       directs or a court rule so requires, for an order directing the  
4       judgment debtor to transfer to the levying officer either or both of  
the following:

(1) Possession of the property sought to be levied upon if the property is sought to be levied upon by taking it into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

13 (c) The order shall be personally served on the judgment debtor  
14 and shall contain a notice to the judgment debtor that failure to  
15 comply with the order may subject the judgment debtor to arrest  
and punishment for contempt of court.

16 Cal. Code Civ. Proc. § 699.040. Here, plaintiff is entitled to a turnover  
17 order, as both judgments for the payment of money and writs of execution  
18 have been obtained, yet the debtor, despite having full knowledge of the  
19 amounts owed and these collection efforts, refuses to satisfy its obligations.

## CONCLUSION

21 For the foregoing reasons and for good cause shown, this court  
22 **GRANTS** plaintiff's motion for turnover order. Defendant shall have  
23 twenty-one (21) days from the date of this Order to transfer title of the real

25           2 Here, plaintiff regularly noticed its motion. However, defendant failed to file an  
26 opposition or statement of non-opposition to the motion, as required by the Local  
27 Rules. E.D. Cal. L.R. 78-230(c). While normally the court would issue an order to  
28 show cause to defendant for such failure, because the governing statute permits  
issuance of the requested order *ex parte*, the court renders its decision without a  
response from defendant.

1 property located at 140 East Hillcrest Drive, Auburn, CA, 95603-31052,  
2 Placer County Assessor's Parcel Number 054-171-010-000, to plaintiff, so  
3 that the property may be auctioned off to satisfy the subject judgments.

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5 Dated: February 23, 2009

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE